

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
MCI, Inc.)	
)	CC Docket No. 96-45
Petition for Waiver of FCC Rule)	
Section 54.802(a))	

PETITION FOR WAIVER OF FCC RULE SECTION 54.802(a)

EXPEDITED ACTION REQUESTED

MCI, Inc. (“MCI”), pursuant to Section 1.3 of the Federal Communications Commission’s Rules,¹ hereby respectfully requests a waiver of certain quarterly line count filing deadlines set forth in FCC Rule Section 54.802(a)² for interstate access support (“IAS”).³ Specifically, MCI, as an eligible telecommunications carrier in the state of New York, respectfully requests that the Commission direct the Universal Service Administrative Company (“Administrator”) to accept and apply MCI’s line count data that was filed late for the fourth quarter of 2003, the first quarter of 2004, and the second quarter of 2004 for MCImetro Access Transmission Services, Inc.,⁴ for New York. Once the line count data is accepted and applied, MCI should not be held liable for any

¹ 47 C.F.R. §1.3 (2003).

² 47 C.F.R. §54.802(a) (2003).

³ A petition filed by MCI seeking waiver of the June 30, 2004 filing deadline for IAS annual certification, as required by FCC Rule Section 54.809(c), is pending. In the Matter of MCI, Inc., Petition for Waiver of FCC Rule Section 54.809(c), *Petition for Waiver of Section 54.809(c) of the Commission Rules – Expedited Action Requested*, CC Docket No. 96-45 (filed July 21, 2004).

⁴ MCImetro Access Transmission Services, Inc. is a subsidiary of MCI.

unwarranted “true-up” invoices issued by the Administrator for IAS advance payments for the fourth quarter of 2003 and the first quarter of 2004.⁵

Pursuant to Section 54.802(a), the line counts for IAS funding for the fourth quarter of 2003, the first quarter of 2004, and the second quarter of 2004 were due, respectively, on March 31, 2004, June 30, 2004, and September 30, 2004. However, due to administrative oversight, MCI did not file those line counts until December 23, 2004.⁶ MCI regrets this oversight and, when it came to MCI’s attention, sought to remedy it quickly through the December 23 filing.

Grant of a waiver of Section 54.802(a) is necessary to prevent MCI from being held liable for any unwarranted “true-up” invoice amounts for IAS advance payments⁷ and prevent MCI from being otherwise adversely affected.⁸ Not granting a waiver would be contrary to the public interest and inequitable given that MCI did, in fact, continue to provide service to qualifying lines during the quarters at issue, as evidenced by its December 23 filing. Furthermore, requiring MCI to pay the invoice amounts and forego deserved IAS support could detrimentally affect its provision of service to rural areas of New York.

⁵ To the extent appropriate, the Administrator should also retroactively pay IAS to MCI for all quarters subsequent to the first quarter of 2004 that MCI did not receive IAS due to an absence of line count data. (For certain quarters subsequent to the first quarter of 2004, retroactive payment to MCI would also be subject to grant of MCI’s other pending waiver request, as described in footnote 3.)

⁶ MCI will make its December 23, 2004 filing available to the Commission upon request.

⁷ The Administrator issued invoices for \$94,923 for the fourth quarter of 2003 and \$197,715 for the first quarter of 2004. MCI does not admit these amounts are correct, *i.e.*, that MCI actually received those amounts for the stated quarters, and reserves the right to contest them.

⁸ To the extent appropriate, grant of a waiver may also enable MCI to receive appropriate IAS funding for quarters subsequent to the first quarter of 2004.

I. BACKGROUND

Rule Section 54.802(a) states that in order to receive interstate access support, an eligible telecommunications carrier that is providing service within an area served by a price cap local exchange carrier:

[S]hall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each price cap local exchange carrier study area disaggregated by UNE Zone if UNE Zones have been established within that study area, showing residential/single-line business and multi-line business line counts separately.⁹

MCI has been filing line counts in connection with IAS since 2000, and, with the exception of the line count filings at issue here, has consistently filed its line counts on a timely basis with the appropriate entity. However, the line counts for which MCI seeks a waiver (the fourth quarter of 2003, the first quarter of 2004, and the second quarter of 2004) came due during a time when MCI was undergoing significant personnel changes. MCI inadvertently did not file those line counts when they were due (respectively, on March 31, 2004, June 30, 2004, and September 30, 2004). Once it learned that the line counts had not been filed, it quickly remedied the matter by filing them on December 23, 2004.¹⁰ However, the Administrator cannot accept the late-filed line counts unless the Commission waives the filing deadlines set forth in Section 54.802(a).

Because the Administrator did not have line counts for the fourth quarter of 2003 and first quarter of 2004, it concluded, contrary to actual fact, that MCI did not have the requisite number of lines to support the IAS it had received in advance for those quarters.

⁹ 47 C.F.R. §54.802(a).

¹⁰ MCI will make its December 23, 2004 filing available to the Commission upon request.

Accordingly, the Administrator invoiced MCI for repayment. Additionally, based in part on the lack of these line count filings, the Administrator refused to provide MCI with IAS after the first quarter of 2004.¹¹

MCI regrets that line counts the fourth quarter of 2003, the first quarter of 2004, and the second quarter of 2004 were not timely filed, and is taking steps to ensure that its line counts are timely filed in the future.

II. DISCUSSION

Pursuant to Section 1.3, the Commission may waive a rule “for good cause shown.”¹² As the Wireline Competition Bureau (then Common Carrier Bureau) noted in *In the Matter of Smith Bagley, Inc., Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, “[t]he Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.”¹³ The Bureau also noted that “the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”¹⁴

¹¹ For certain quarters subsequent to the first quarter of 2004, the Administrator’s refusal to provide MCI with IAS was also based on MCI inadvertently not timely filing a required certification by June 30, 2004. As noted above in footnote 3, MCI petitioned for waiver of the certification due date and that request is pending.

¹² 47 C.F.R. §1.3.

¹³ *In the Matter of Smith Bagley, Inc., Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, *Order*, 16 FCC Rcd. 15275, ¶ 5 (2001), *citing Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ *In the Matter of Smith Bagley, Inc.*, at ¶ 5, *citing WAIT Radio*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) and *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166.

In this case, there is good cause for waiving the line count filing deadlines contained in Section 54.802(a). The purpose of the rule is to cause carriers who receive IAS to submit current data to be used to calculate that support. MCI had been timely submitting such data for rural New York, the area in question, since 2000, and timely submitted data for the third quarter of 2003, the quarter immediately preceding the quarters at issue. The Administrator thus had an extensive and reasonably current record of MCI's line counts even without the specific filing for the fourth quarter of 2003. It would thus have been reasonable for the Administrator to base IAS support on the existing data, seek the new data from MCI, and perform a true-up once the new data was provided. Although MCI acknowledges the administrative importance of filing line counts on a timely basis, a strict application of the rule required the Administrator to make the unrealistic presumption that MCI's line count in rural New York suddenly dropped to zero, and it proceeded on that assumption for several quarters before notifying MCI. Such action was contrary to the underlying intention of the rule and has resulted in significant adverse effects to MCI. Thus, good cause exists for waiver.

Additionally, it would be inequitable to hold MCI liable for the Administrator's IAS "true-up" invoice amounts for the fourth quarter of 2003 and the first quarter of 2004, because those amounts are based on the erroneous assumption that MCI was serving far fewer lines, even zero lines, than it was actually serving. A true-up based on the number of lines MCI was actually serving would have resulted in far lower invoice amounts or even no invoice. Although MCI had not timely filed line counts, it was continuing to serve lines with the IAS it received. Because MCI was providing service to these high-cost lines, IAS was needed. Thus, holding MCI liable for the invoice amounts

would not be a true-up; it would be a penalty. Such a result would be inequitable and, thus, waiver is appropriate.¹⁵

Also, strict compliance with Section 54.802(a) would be inconsistent with the public interest because holding MCI liable for IAS funding for the fourth quarter of 2003 and first quarter of 2004 (and denying it funding for certain subsequent quarters) could detrimentally affect its provision of service to rural areas of New York. The universal service program is intended to promote access to advance services in areas where telephone subscribership has been historically low, and MCI's program in New York furthers this goal. As the Federal-State Joint Board on Universal Service has noted, however, carriers cannot be expected to make the financial investments to provide service in high cost areas without the assurance of federal universal service support.¹⁶ Therefore, grant of a waiver is warranted.

¹⁵ For this same reason, it would also be inequitable to deny IAS to MCI for quarters subsequent to the first quarter of 2004. Because it was continuing to serve approximately the same number of lines as it had in previous quarters, the need for IAS remained.

¹⁶ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 19 FCC Rcd. 4257, ¶22 (2004).

III. CONCLUSION

For the reasons set forth above, MCI respectfully requests a waiver of Section 54.802(a), so that the Administrator may accept and apply MCI's line count data for the fourth quarter of 2003, the first quarter of 2004, and the second quarter of 2004.

Respectfully submitted,

/s/ John R. Delmore

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January 7, 2005